

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. : 1027 of 2006

Date of decision: 16.8.2007

Bishamber Dutt

...Petitioner.

Versus

State of H.P. and others.

...Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?¹.No.

For the petitioner : Mr.Suneet Goel, Advocate

**For the respondents : Mr. M.S. Chandel, Advocate General with
Ms. Meenakashi Sharma, Dy. Advocate
General.**

Rajiv Sharma, J. (Oral)

A challenge has been laid by way of this petition to the order passed by the Financial Commissioner (Appeals) dated 22.8.2006 in Revision Petition No. 66/2003.

The brief facts necessary for the adjudication of this petition are that proceedings were initiated against the petitioner under section 163 of the H.P. Land Revenue Act, 1953 by issuing notice to the petitioner. The order of ejectment was passed against the petitioner by the Assistant Collector Ist Grade, Kandaghat, District Solan, H.P. on 23.4.1984. The warrant for ejectment was also sent by the Assistant Collector Ist Grade, Kandaghat on 23.4.1984 itself to Field Kanungo. It appears that no steps were taken for the ejectment of the petitioner from the land in question but a fresh show cause notice was issued to him on

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?* No.

30.6.1999 to appear in person before the Assistant Collector 1st Grade, Kandaghat on 5.7.1999 at 10.00 A.M. The petitioner preferred an appeal against the order dated 23.4.1984 passed by the Assistant Collector 1st Grade, Kandaghat on 27.8.1999. The Collector dismissed the appeal on 7.11.2000. He preferred a petition under section 17 of the H.P. Land Revenue Act, 1953 against the order dated 7.11.2000 before the Commissioner, Solan, District Solan, H.P. The Commissioner dismissed the petition on 14.1.2003. Feeling aggrieved by the order dated 14.1.2003, he preferred a revision petition before the Financial Commissioner (Appeals) on 17.6.2003. The Financial Commissioner (Appeals) dismissed the revision petition on 22.8.2006.

Mr. Suneet Goel, Advocate appearing on behalf of petitioner had strenuously argued that all the authorities, including the Financial Commissioner have failed to taking into consideration the effect of the amendment carried out by way of the H.P. Village Common Land Vesting and Utilization (Amendment) Act, 2005 vide which new clause (d) had been added to sub section (2) of section 3 of the H.P. Village Common Land (Vesting and Utilization) Act, 1974. He had further contended that the revenue authorities failed to take into consideration the true import of Annexures P-8 and P-9 while adjudicating the matter.

The learned Advocate General had supported the orders passed by the revenue authorities.

I have heard the learned counsel for the parties and perused the record.

This Court had directed the petitioner to place on record the copy of the revision petition filed before the Financial Commissioner (Appeals) to see whether the pleas raised by Mr. Suneet Goel, Advocate in the present writ petition were in fact raised before the Financial

Commissioner (Appeals) or not. The plea with regard to the applicability of the provisions of the H.P. Village Common Land (Vesting and Utilization) Act, 1974 had specifically been taken by the petitioner in revision petition before the Financial Commissioner (Appeals). All the authorities below have failed to take into consideration the effect of the amendment which has been carried out in the H.P. Village Common Land (Vesting and Utilization) Act, 1974 by way of H.P. Village Common Land (Vesting and Utilization) (amendment) Act, 2005. This amendment had a direct bearing on the out come of the revision preferred by the petitioner and it was necessary for the Financial Commissioner (Appeals) to go into the change brought out by the amendment carried out in the year 2005. Authorities have also failed to take into consideration Annexures P-8 and P-9 at the time of passing the orders.

The learned Advocate General had placed strong reliance on Annexure R-4 as well as on Annexures R-1 and R-2 filed along with supplementary affidavit dated 12th July, 2007. The plea raised by the learned Advocate General on the basis of Annexure R-4 filed with the main reply and Annexures R-1 and R-2 filed with the supplementary affidavit is that the land in question had reverted back to the State as per the provisions of the H.P. Village Common Land (Vesting and Utilization) Act, 1974.

Mr. Suneet Goel, Advocate had argued that on the basis of amendment carried out in the H.P. Village Common Land (Vesting and Utilization) Act, 1974 by way of H.P. Village Common Land (Vesting and Utilization) (amendment) Act, 2005, the land had reverted back to the owners of the land. Since the necessary record of right as annexed with this petition was not available before the Financial Commissioner (Appeals), it will be necessary to remand the matter to the Financial

Commissioner (Appeals) to pass a fresh order on the basis of the material available on record in this petition and also to see the effect of the amendment carried out in the year 2005 to the H.P. Village Common Land (Vesting and Utilization) Act, 1974.

The petitioner was always ready and willing to vacate the land in question if the State could accede to his request for exchange of land. The prayer made by the petitioner before the authorities for taking his land in exchange was genuine but the same has not been addressed by the authorities in right perspective. It is in these circumstances that the petitioner admission of being unauthorized possession was to be viewed by the authorities while adjudicating upon the case.

Accordingly this writ petition is allowed. Order dated 22.8.2006 passed by the Financial Commissioner is quashed and set aside. The matter is remanded back to the Financial Commissioner (Appeals) to decide the same afresh within a period of two months from today. The parties are permitted to lead evidence, including by placing on record the revenue record as placed on record in the present writ petition. To avoid the delay, the parties are directed to appear before the Financial Commissioner (Appeals), Government of H.P. Shimla on 3.9.2007.

Since the observations made hereinabove by the Court are to appreciate the rival submissions made by the learned counsel for the parties, therefore, the Financial Commissioner (Appeals) will decide the matter on its own merits wholly uninfluenced by the observations made hereinabove.

There shall be no order as to costs.

(Rajiv Sharma), Judge

August 16, 2007
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